

Sharon Gilbert Timm, Esq.
Attorney I.D. 77778
Penns Court, Suite 111
350 South Main Street
Doylestown, PA 18901
(215) 489-0179

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CAROLIN BRELAND,
Plaintiff,

v.

ATC VANCOM,
Defendant.

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:
:
:

CIVIL ACTION

No. 02-CV-4401

JURY TRIAL DEMANDED

ORDER

AND NOW, this day of , 2002, upon consideration of Plaintiff's Motion to Strike Defendant's Reply Memorandum or for Leave to file a Sur-Reply Memorandum and any response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED. [Said Reply Memorandum is Stricken from the record.] [Plaintiff shall file her Sur-Reply Memorandum within ____ days of this Order.]

BY THE COURT,

J.

Sharon Gilbert Timm, Esq.
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CAROLIN BRELAND,	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 02-CV-4401
v.	:	
	:	
ATC VANCOM,	:	JURY TRIAL DEMANDED
Defendant.	:	

**PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S REPLY MEMORANDUM
OR FOR LEAVE TO FILE SUR-REPLY MEMORANDUM**

AND NOW, this day of October , 2002, comes Plaintiff Carolin Breland, by and through counsel, and respectfully requests this Honorable Court to enter an Order striking Defendant's Reply Memorandum of Law in Support of its Motion to Dismiss for the following reasons:

1. On September 23, 2002, Plaintiff's counsel served via first-class mail and filed a response to Defendant's Motion to Dismiss or in the Alternative to Transfer Venue.
2. On October 4, 2002, Defendant filed and served via first-class mail a Reply Memorandum of Law in Support of its Motion to Dismiss.
3. Local Rule 7.1(c) does not authorize such filings of Reply Memorandums without leave of Court.

4. Defendant did not request leave of Court to file its Reply Memorandum.

5. As an alternative, Plaintiff respectfully requests this Honorable Court for leave to file a Sur-Reply Memorandum.

WHEREFORE, Plaintiff Carolin Breland respectfully requests this Honorable Court to enter an Order striking Defendant's Reply Memorandum from the record for failure to request leave or to enter an Order permitting Plaintiff to file a Sur-Reply Memorandum.

Respectfully submitted,

Date: _____

SHARON GILBERT TIMM, ESQ.
Attorney for Plaintiffs

Sharon Gilbert Timm, Esq.
Attorney I.D. 77778
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350 South Main Street
Doylestown, PA 18901
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**IN THE UNITED STATES DISTRICT COURT
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CAROLIN BRELAND,	:	CIVIL ACTION
Plaintiff,	:	
	:	No. 02-CV-4401
v.	:	
	:	
ATC VANCOM,	:	JURY TRIAL DEMANDED
Defendant.	:	

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF HER MOTION TO
STRIKE DEFENDANT'S REPLY MEMORANDUM FROM THE RECORD OR
FOR LEAVE TO FILE SUR-REPLY MEMORANDUM**

I. FACTUAL AND PROCEDURAL STATEMENT

In the interest of brevity, Plaintiffs incorporate the foregoing factual allegations contained within her foregoing Motion.

II. DISCUSSION

Local Rule of Civil Procedure 7.1(c) states in part:

... Unless the parties have agreed upon a different schedule and such agreement is approved under Local Civil Rule 7.4 and is set forth in the motion, or unless the Court directs otherwise, any party opposing the motion shall serve a brief in opposition, together with such answer or other response which may be appropriate, within fourteen (14) days after service of the motion and supporting brief. The Court may require or permit further briefs if appropriate.

**A. DEFENDANT'S REPLY MEMORANDUM SHOULD BE
STRICKEN FROM THE RECORD FOR FAILURE TO**

REQUEST LEAVE OF COURT

The rule provides only for a brief in support of a motion and a brief in opposition; leave to file a reply brief must be sought from the court. Beaver v. DISA, 838 F.Supp. 206 215 (E.D. Pa. 1993). Where leave of court of not obtained, or where the court deems a reply inappropriate, there is nothing in the local rules or in Fed.R.Civ.P. 7(b) that would require the court to allow a reply to be filed. Parker v. Carroll, 6 F.Supp.2d 427, 428 (E.D. Pa. 1998). As there is no right to file a reply memorandum without court permission, the Reply Memorandum...is hereby STRICKEN. McCarthy v. Pelino & Lentz, 1995 U.S. Dist. LEXIS 7940 (E.D.Pa. June 6, 1995). Defendants did not request leave to file a reply brief... The reply brief... will therefore be STRICKEN from the record. Larzarz v. Brush Wellman Inc., 1994 U.S. Dist. LEXIS 12146 n.1 (E.D.Pa. Aug. 26, 1994).

Here, Defendant filed its Reply Memorandum without seeking leave of Court. Defense counsel has no right to file such reply memorandum. Therefore, Plaintiff respectfully requests the Reply Memorandum be stricken from the record.

B. PLAINTIFF IS GRANTED LEAVE TO FILE A SUR-REPLY MEMORANDUM

It is not unheard of for a sur-reply brief to be filed. Kot v. Hackett, 1993 U.S. Dist. LEXIS 10429 (E.D.Pa. July 29, 1993), a sur-reply filed in civil rights case.

Should the court deny Plaintiff's motion to strike Defendant's Reply memorandum, Plaintiff respectfully requests that she be permitted to file a sur-reply memorandum.

III. CONCLUSION

Therefore, for all the foregoing reasons and authority of law, Plaintiff respectfully requests this Honorable Court to enter an Order striking Defendant's Reply Memorandum from the Record or granting Plaintiff leave to file a Sur-Reply Memorandum.

Respectfully submitted,

Date: _____

SHARON GILBERT TIMM, ESQ.
Attorney for Plaintiff

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CAROLIN BRELAND,
Plaintiff,

vi.

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CERTIFICATE OF SERVICE

I, Sharon Gilbert Timm, Esquire, attorney for Plaintiff, hereby certify that a true and correct copy of Plaintiff's Motion to Strike Reply Memorandum or for Leave to File Sur-Reply Memorandum was sent via prepaid U.S. Mail first class upon the following:

Jonathan F. Bloom, Esquire
Jason K. Cohen, Esquire
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2730 North Ballas Road, Suite 200
St. Louis, MO 63131-3039

Date: _____

Sharon Gilbert Timm, Esquire
Attorney for Plaintiff

